CIVIL RULE.

Before Mr. Justice Pigot and Mr. Justice Beverley.

IN THE MATTER OF ANUND CHUNDER ROY (AUCTION-PURCHASER) *v.* NITAI BHOOMIJ (JUDGMENT-DEBTOR).* 1889 *February* 20.

Appeal—Appeal newly given by law—Proceedings instituted prior to change in procedure—Appeal from order under s. 312, *Civil Procedure Code* (*Act XIV of* 1882)—*Act VII of* 1888, *ss.* 55 *and* 56.

It is a general principle of law that an appeal newly given by law is made applicable to proceedings instituted before that change in procedure is made. *Held*, accordingly, that an appeal from an order under the second paragraph of s. 312 of the Civil Procedure Code, although made before Act VII of 1888 came into force, would, upon the operation of that Act, lie to the Court, to which an appeal would lie from the decree in the suit in relation to which such order was made. *Hurrosundari Dabi* v. *Bhojohari Das Manji* (1) explained and distinguished.

ON the 5th September 1887, Anund Chunder Roy purchased a tenure at an auction sale held in execution of a decree for rent against Nitai Bhoomij. On the 7th June 1888, the sale was set aside by an order made by the Munsiff of Purulia under the second paragraph of s. 312 of the Code of Civil Procedure. In July 1888, a few days after Act VII of 1888 came into operation, Anund Chunder Roy appealed from this order to the Deputy Commissioner of Manbhoom, who dismissed the appeal on the ground that he had no jurisdiction to hear it, observing: "It is, however, clear that no appeal lies. By s. 588, clause (16) and s. 589, it is provided that an appeal lies *to the High Court* from 'orders under s. 294, the first paragraph of s. 312 or s. 313, for confirming, or setting aside, or refusing to set aside a sale of immoveable property.'

"The difference between the terms of s. 588, clause (F) of Act X of 1877, the former Civil Procedure Code, appears to indicate that the Legislature advisedly took away the right of appeal in cases in which the objection had been allowed, and the sale set aside. Even if this were otherwise, the appeal, if any,

* Civil Rule No. 1302 of 1888, against the order passed by E. N. Baker, Esq., Deputy Commissioner of Manbhoom, dated the 27th of August 1888.

(1) I. L. R., 13 Calc., 86.

1889

IN THE MATTER OF ANUND CHUNDER ROY v. NITAI BHOOMIJ.

would lie to the High Court, and not to this Court. I have, therefore, no jurisdiction.

"By ss. 55 and 56, Act VII of 1888, an appeal has been allowed in this class of cases to the District Court. This Act came into force on the 1st July 1888, a few days before this appeal was filed; and it is argued that the procedure and jurisdiction in the case before me are therefore governed by its provisions. This, however, does not appear to be correct. In *Hurrosundari Dabi* v. *Bhojohari Das Manji* (1), it was held that the words 'any proceedings commenced before the repealing Act shall have come into operation' in s. 6 of the General Clauses Act I of 1868 include an appeal against a decree made before the passing of the repealing Act, as such appeal must be considered a proceeding in the original suit. The *ratio decidendi* of this case applies equally whether the repealing Act repeals an entire Act, or only portion of an Act. It follows, therefore, that this appeal is governed by the law as it stood at the time of institution of the original suit, *i.e.*, in the year 1883. As already stated, no appeal lies to this Court under the law as it stood then."

On the 16th November 1888, Anund Chunder Roy moved the High Court, and obtained a rule, calling upon the judgment-debtor, respondent, Nitai Bhoomij, to show cause why the order of the Deputy Commissioner of Manbhoom, dated the 27th August 1888, refusing to hear an appeal from an order under s. 312 of the Civil Procedure Code, made by the Munsiff of Purulia, and dated the 7th June 1888, should not be set aside on the ground that the Deputy Commissioner had jurisdiction to entertain the appeal under the provisions of Act VII of 1888.

On the rule coming up for argument,—

Baboo *Kishori Lal Goswami* for the petitioner.

Baboo *Issur Chunder Chuckerbutty* and Baboo *Upender Chunder Bose* for opposite party.

The judgment of the Court (PIGOT and BEVERLEY, JJ.) was as follows:—

In this case an order under the second paragraph of s. 312 of the Civil Procedure Code, setting aside a sale on the

(1) I. L. R., 13 Calc., 86.

1889

IN THE MATTER OF ANUND CHUNDER ROY v. NITAI BHOOMIJ.

ground of a material irregularity, was made by the Munsiff of Purulia.

The order was made on the 7th June 1888, before Act VII of 1888 came into force; and, therefore, when the order was made, no appeal lay from it to the Court of the Deputy Commissioner.

Act VII of 1888 came into force on July 1st, 1888. By that enactment an order made under s. 312 is made appealable to the Court, to which an appeal would lie from the decree in the suit in relation to which such order was made. In the present case such Court would be that of the Deputy Commissioner.

After the 1st July, an appeal was presented to the Deputy Commissioner from the order of June 7th. The Deputy Commissioner rejected it, holding that the new enactment did not apply, as the suit in which the order was made was instituted under the Act of 1882, under which no such appeal was allowed to his Court; that, therefore, the old law governed the matter, and that he had no jurisdiction to hear the appeal.

From that order this appeal is brought. The decision appealed from is founded on the decision of this Court in *Hurrosundari Dabi* v. *Bhojohari Das Manji* (1), in which it was held that no appeal lay against a decree in a suit instituted under the old Bengal Rent Act VIII of 1869, although the appeal was presented after the new Act VIII of 1885 came into force, by which Act (it was assumed for the purpose of the argument) an appeal was given.

That case was decided upon the construction of s. 6 of the General Clauses Act. The appeal, if it was given, was given by the Act of 1885, which repealed the Act of 1869; and it was held, that as the repeal of the Act of 1869 could not affect proceedings commenced before the repealing Act came into operation, and as the word "proceedings" in the General Clauses Act includes an appeal against a decree made before the passing of the repealing Act, the appeal did not lie.

In the present case, the question does not arise in respect of the provisions of a repealing Act. So far as the ss. 55 and 56 of Act VII of 1888 affect the present proceedings, they do so, not by repealing the former Act, but by adding to its provisions

(1) L. R., 13 Calc., 86.

1889

IN THE MATTER OF ANUND CHUNDER ROY v. NITAI BHOOMIJ.

an appeal in a case in which the former Act did not allow one. They advance the remedy of the subject in this particular respect. We do not think, therefore, that the General Clauses Act applies.

That being so the general principle of law is applicable, that an appeal newly given by law is made applicable to proceedings instituted before that change in procedure is made. That principle is contravened by the General Clauses Act (whether intentionally or not) in cases where the appeal is conferred by means of the operation of the repeal of an existing Act. But that effect of the General Clauses Act must be limited to the cases strictly covered by its provisions. The present is not such a case. We hold, therefore, that the appeal lies to the Court of the Deputy Commissioner. We make the rule absolute.

We set aside the order of the Deputy Commissioner, and direct him to entertain the appeal.

The costs of this Rule will be disposed of by the Deputy Commissioner on the hearing of the appeal we now direct him to entertain. We assess the hearing fee on each side at three gold mohurs.

C. D. P. *Rule made absolute.*

CIVIL REFERENCE.

Before Mr. Justice Wilson and Mr. Justice Trevelyan.

1889
March 6.

RAMEN CHETTY (PLAINTIFF) *v.* MAHOMED GHOUSE AND ANOTHER (DEFENDANTS).*

Stamp Act, 1879, *Sch. I, Arts.* 11, 19—*Cheque—Bill of Exchange, Admissibility in evidence—Post-dated cheque—Stamp Act*, 1879, *s.* 67—*Penalty.*

In determining whether a document is sufficiently stamped for the purpose of deciding upon its admissibility in evidence, the document itself as it stands, and not any collateral circumstances which may be shown in evidence, must be looked at.

Bull v. *O'Sullivan* (1), *Gatty* v. *Fry* (2), and *Chandra Kant Mookerjee* v. *Kartik Charan Chaile* (3) referred to.

* Rangoon Reference No. 1 of 1889, made by C. E. Fox, Esq., Officiating Recorder of Rangoon, dated the 11th of January 1889.

(1) L. R., 6 Q. B., 209. (2) L. R., 2 Ex. D., 265.
(3) 5 B. L. R., 103.